ORIGINAL

No. 83-6061

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

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SUPREME COURT, U.S.

JOSE AND FRANCISCO GARCIA, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether 18 U.S.C. 2114, which proscribes the assault and robbery of any person having lawful custody of any mail matter or money or property of the United States, is limited to assaults of post office employees and robbery of mail matter.

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OPINION BELOW

The opinion of the court of appeals (Pet. App.) is reported at 718 F.2d 1528.

JURISDICTION

The judgment of the court of appeals was entered on November 7, 1983. The petition for a writ of certiorari was filed on January 6, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

18 U.S.C. 2114 provides:

> Whoever assaults any person having lawful charge, control, or custody of any mail matter or of any money or other property of the United States, with intent to rob, steal, or purloin such mail matter, money, or other property of the United States, or robs any such person of mail matter, or of any money, or other property of the United States, shall, for the first offense, be imprisoned not more than ten years; and if in effecting or attempting to effect such robbery he wounds the person having custody of such mail, money, or other property of the United States, or puts his life in jeopardy by the use of a dangerous weapon, or for a subsequent offense, shall be imprisoned twenty-five years.

STATEMENT

Following a jury trial in the United States District court for the Southern District of Florida, petitioners were convicted on multiple counts charging possession of counterfeit currency, in violation of 18 U.S.C. 474; conspiracy, in violation of 18 U.S.C. 371; stealing money of the United States, in violation of 18 U.S.C. 641; and robbing a Secret Service Agent of money of the United States while putting his life in jeopardy through use of a dangerous weapon, in violation of 18 U.S.C. 2114. Jose Garcia was also convicted of resisting arrest by use of a deadly weapon, in violation of 18 U.S.C. 111. 1/

Each petitioner was sentenced to the mandatory 25-year term under 18 U.S.C. 2114 for robbing a government official by means of deadly force. Additionally, Jose Garcia was sentenced to a consecutive 10-year term on the resisting arrest charge, and to concurrent five-year terms on the remaining counts. Francisco Garcia was sentenced to concurrent five-year terms on the remaining counts, to run consecutively to the mandatory 25-year term. The court of appeals affirmed.

1. As summarized in the decision of the court below (Pet. App. 416-418), the evidence at trial showed that on July 22, 1981, Secret Service Agent David Holmes, posing as a person interested in purchasing counterfeit money, was introduced by an informant to Ernesto Dominguez and petitioner Francisco Garcia. When Holmes inquired of Garcia and Dominguez whether they had the counterfeit money with them, Dominguez responded that it was in the trunk of a nearby car, in which petitioner Jose Garcia was seated (id. at 416). When the agent approached the vehicle and informed Garcia that he wanted to complete the deal, Garcia responded that he was not going to display phony bills there because the place was "sort of heated-up" (id. at 417). When petitioners requested Holmes to display the genuine currency with

1/ Francisco Garcia was acquitted on the resisting arrest count.

which the agent intended to make the purchase, Holmes flashed $1,800 of government money (ibid.).

The parties then agreed to reconvene at Bryant Park, a more secure location. When Holmes arrived there, he was met by petitioners and Dominguez, who again asked to see his money. When Holmes refused and demanded first to see a sample of the counterfeit money, Francisco Garcia gave him a counterfeit $50 bill to examine and told him that they had $85,000 in counterfeit currency to sell. Holmes then asked to see more and began walking toward his car. (Pet. App. 417).

At this, Jose Garcia jumped out of his car, chambered a round in his pistol, and, with his finger on the trigger, pointed it at Holmes. He screamed, "[e]nough of this bullshit, give me the money." Holmes then raised his arms in a predetermined distress signal and began moving toward his car, telling Jose Garcia that he was going to get the money. Within seconds, other agents who had observed the distress signal arrived and ordered Jose Garcia to drop his weapon. When Garcia complied, one of the agents recovered it, unchambered the round and, after conducting a patdown search of Garcia's clothing, seized a counterfeit $100 bill. (Pet. App. 417).

As the agents were converging on the scene, Francisco Garcia ran toward Holmes' government car, removed a black leather pouch containing Holmes' government money from the vehicle, and attempted to escape on foot. However, he collided with a vehicle driven by one of the agents and droped the pouch. Upon his apprehension, a search of his person resulted in the discovery of a $50 counterfeit note. (Pet. App. 418).

2. On appeal, petitioners claimed, inter alia, that their convictions under 18 U.S.C. 2114 were improper because that section proscribes only the assault and robbery of postal service employees and property. The court of appeals held, however, "that a postal nexus is not an essential element of a crime charged under section 2114" (Pet. App. 421). Contra, United

United States v. Rivera, 521 F.2d 125 (2d Cir. 1975); United States v. Reid, 517 F.2d 953 (2d Cir. 1975); United States v. Fernandez, 497 F.2d 730 (9th Cir. 1974). The court reasoned that "to construe section 2114 as requiring proof of a postal nexus defies the section's unambiguous wording that it encompasses the robbery of 'mail matter or any money or other property of the United States'" (Pet. App. 419-420 (emphasis in the original)). Relying upon Judge Mansfield's dissent in United States v. Reid, supra, 2/ the court held that, even if resort to Section 2114's legislative history were necessary, the official reports of both the House and Senate Committees demonstrated that "both Committees understood its purpose to be 'to bring within the provisions of the Penal Code the crime of robbing or attempting to rob custodians of Government money.'" Pet. App. 420 (quoting United States v. Reid, 517 F.2d at 967 (Mansfield. J., dissenting)).

Finally, the court observed that "a plain language interpretation of section 2114 produces consistency among federal statutes imposing criminal punishment for robbery of a government employee" (Pet. App. 420). The court noted (ibid.) that various statutes -- with varying penalties -- proscribe the assault of federal officials and the robbery of government property. See, e.g., 18 U.S.C. 111 (10-year penalty for assault of federal officer with dangerous weapon); 18 U.S.C. 2112 (15-year term for robbery of "any kind * * * of personal property belonging to the United States"). If Section 2114 is read "according to its plain and unequivocal language," the violent robbery of any government property -- whether mail or other property -- draws the same penalty (Pet. App. 420).

DISCUSSION

Petitioners contend (Pet. 13-21) that they were improperly

2/ The court at one point incorrectly attributed language in the Reid dissent to Judge Friendly (Pet. App. 420).

convicted under 18 U.S.C. 2114 inasmuch as that section reaches only assaults and robberies with a "postal nexus." Because the contrary holding of the court below is in conflict with the decisions of two other courts of appeals, 3/ the petition for a writ of certiorari should be granted. For the reasons set forth below, however, we submit that the decision of the lower court is correct. 4/

1. As the Court recently reiterated in Russello v. United States, No. 82-472 (Nov. 1, 1983), slip op. 4 (quoting United States v. Turkette, 452 U.S. 576, 580 (1981)), "'[i]n determining the scope of a statute, we look first to its language. If the statutory language is unambiguous, in the absence of "a clearly expressed legislative intent to the contrary, that language must be regarded as conclusive.'" 5/ Section 2114 provides that "[w]hoever assaults any person having lawful charge, control or custody of any mail matter or of any money or other property of the United States, or * * * robs any such person of mail matter * * * or other property of the United States" shall be

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3/ United States v. Rivera, 521 F.2d 125 (2d Cir. 1975); United States v. Reid, 517 F.2d 953 (2d Cir. 1975); United States v. Rivera, 513 F.2d 519 (2d Cir. 1975); United States v. Fernandez, 497 F.2d 730 (9th Cir. 1974).

4/ As petitioner observes, in Hanahan v. United States, 414 U.S. 807 (1973), we conceded that Section 2114 was intended to embrace only robberies of post offices or postal employees and took the position that, where the robbery of non-postal government property is involved, the defendant should be charged and sentenced under 18 U.S.C. 2112. On the basis of that concession, the Court granted the petition, vacated the judgment of the court of appeals, and remanded the case for reconsideration. Ibid. Upon further reflection, we believe that the concession in Hanahan was ill-considered and, therefore, decline to adhere to that position. The fact that the government has previously taken the position that Section 2114 applies only to postal-related offenses does not preclude it from urging a more expansive interpretation of the statute now. See Barrett v. United States, 423 U.S. 212, 222 (1976).

5/ See Rubin v. United States, 449 U.S. 424, 430 (1981); Consumer Product Safety Commission v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980); United States v. Apfelbaum, 445 U.S. 115, 121 (1980); Lewis v. United States, 445 U.S. 55, 60 (1980); United States v. Oregon, 366 U.S. 643, 648 (1961). See also United States v. Bass, 404 U.S. 336, 339 (1971); Schwegmann Bros. v. Calvert Distillers Corp., 341 U.S. 384, 395-396 (1951) (Jackson, J. concurring).

imprisoned. The language of the statute plainly is not limited to robbery of mail matter or assaults upon postal service custodians of such matter. As the court below observed (Pet. App. 420), the statute proscribes the assault of "any person" in custody of government property. The covered property, moreover, is not limited to mail matter. The specific use of the disjunctive term "or" after the phrase "mail matter" and before the phrase "any money or other property of the United States" (18 U.S.C. 2114) reveals Congress's "clear intent" (Pet. App. 420) to reach assaults or robberies of anyone who is the custodian of valuables belonging to the United States. See, e.g., Reiter v. Sonotone Corp., 442 U.S. 330, 339 (1979). 6/

2. Nor can it be said that the "clearly expressed legislative intent" (Russello v. United States, slip op. 4) of Section 2114 is contrary to the statute's unambiguous language so as to require that the plain language be disregarded. "If anything [the legislative history] reinforces the statute's plain, unequivocal language." United States v. Reid, 517 F.2d at 969 (Mansfield, J. dissenting).

The precursor of Section 2114, 18 U.S.C. (1934 ed.) 329, was contained in the section of the criminal code entitled "Offenses Against the Postal Service." As written, that statute proscribed assaults or robbery of persons "having custody of mail matter." In 1935, as the result of a written request by the Postmaster General, Congress amended the statute by adding the phrase "money

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6/ If Congress had intended the scope of the statute to be limited to robbery of or assaults upon postal employees or assaults or robbery of other persons having custody of postal property or monies it surely knew how to say so. As Judge Mansfield noted in his dissent in United States v. Reid, 517 F.2d at 969, Congress has repeatedly enacted laws limited in their scope to "mail," "letters," or "packets" (18 U.S.C. 1693, 1694, 1695, 1696, 1698, 1700, 1701, 1703); a "post office or any authorized depository for mail matter" (18 U.S.C. 1702); a "letter box," "mail receptacle," or "authorized depository for mail matter" (18 U.S.C. 1706); "property used by the Post Office Department" (18 U.S.C. 1707); "postal funds" (18 U.S.C. 1711); a "letter or mail carrier" (18 U.S.C. 1702); and a "postmaster" or "Postal Service Employee" (18 U.S.C. 1709).

or other property of the United States." 7/ The legislation was handled in both the House of Representatives and the Senate by the Committees on the Post Office and Post Roads. But neither the initiating request of the Postmaster General nor the reports of the two congressional committees responsible for the 1935 amendment lend any support to the proposition that the statute, as amended, was limited to postal employees or postal property. To the contrary, all parties involved in the legislative process asserted, without qualification, that the purpose of the proposed amendment was to protect all custodians of any government money or property from assault or robbery. 8/

Petitioners observe (Pet. 20-21) that, during the floor debate on the 1935 amendment in the House of Representatives, Congressman Donald C. Dobbins, a member of the House Post Office Committee, stated that "[t]he only purpose of the pending bill is to extend the protection of the present law to property of the United States in the custody of postal officials, the same as it now extends that protection to mail matter in the custody of postal officials." 79 Cong. Rec. 8205 (1935). Statements made during floor debates, however, reflect at best the understanding of individual members. By contrast, "[a] committee report represents the considered and collective understanding of those Congressmen involved in drafting and studying the proposed

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7/ See Act of Aug. 26, 1935, ch. 694, 49 Stat. 867 et seq.

8/ The Postmaster General's letter to the House Committee on Post Offices and Post Roads stated, without limitation, that "the Penal Code should be amended so as to bring within its provisions the crime of robbing or attempting to rob custodians of Government moneys." See S. Rep. 1440, 74th Cong., 1st Sess. 1-2 (1935). The bill containing the amendment that was ultimately reported to Congress was described by the House Committee Report as one "Safeguarding Custodians of Government Moneys and Property" (H.R. Rep. 582, 74th Cong., 1st Sess. 1 (1935)) and by the Senate Committee Report as "Providing For Punishment For the Crime of Robbing or Attempting to Rob Custodians of Government Moneys or Property" (S. Rep. 1440, supra, at 1). Both reports, using identical language, explained that "[t]he purpose of the pending bill is to bring within the provisions of the Penal Code the crime of robbing or attempting to rob custodians of Government moneys." H.R. Rep. 582, supra, at 1; S. Rep. 1440, supra, at 1.

legislation." Zuber v. Allen, 396 U.S. 168, 186 (1969). Here, the authoritative committee reports of both Houses, including the House committee of which Congressman Dobbins was a member, are contrary to his restrictive view of the amendment. H.R. Rep. No. 582, supra, at 1; S. Rep. 1440, supra, at 1. In these circumstances, Congressman Dobbins' statement is entitled to little weight -- especially when it runs counter to the plain language of Section 2114. 9/

Moreover, the contemporaneous statement of another member of the House during the floor debate on the legislation presented a substantially different view of the legislation from the one suggested by Congressman Dobbins. Responding to a suggestion that the bill should be expanded to penalize the burglary of a private citizen's home, Congressman Wolcott stated that, to his understanding, "[t]his bill is confined to assaults on Federal law-enforcement officers. For that reason I have no objection to it. I do not want to see them federalize all the criminal laws of the States, and this bill does not do it; it merely amends the existing law with respect to assault with intent to commit robbery." 79 Cong. Rec. 8205 (1935). As construed by Representative Wolcott, therefore, the statute extended beyond

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9/ As Justice Jackson explained in Schwegmann Bros. v. Calvert Distillers Corp., 341 U.S. 395-396 (Jackson, J., concurring):

> Resort to legislative history is only justified where the face of the Act is inescapably ambiguous, and then I think we should not go beyond Committee reports, which presumably are well considered and carefully prepared * * *. [T]o select casual statements from floor debates, not always distinguished for candor or accuracy, as a basis for making up our minds what law Congress intended to enact is to substitute ourselves for the Congress in one of its important functions.

Cf. Simpson v. United States, 435 U.S. 6, 13-14 (1978) (statement on floor of the House of Representatives, although not dispositive on statutory construction issue, was entitled to weight because the statement was in accord with the legislative rationale underlying the statute at issue, and there were no relevant passages regarding the statute in the congressional reports).

postal employees to "assaults on Federal law-enforcement officers" (ibid.). In view of this straightforward construction of the statute on the floor of the House, Congressman Dobbins's more restrictive statement provides no sound basis for limiting Section 2114 in a manner that is flatly inconsistent with its plain language. 10/

3. Nor is it of significance that, following its 1935 amendment, the statute in question remained in a subdivision of the Penal Code entitled "Offenses Against the Postal Service." See United States v. Reid, 517 F.2d at 957. The statute to which the amendment was made had been placed in that section prior to 1935 (see 18 U.S.C. (1934 ed.) 320) and Congress's amendatory action simply provided no occasion to effect a broad revision of the penal code's structure. Moreover, as noted in the Reid dissent (517 F.2d at 964), prior to its 1948 revision the penal code did not have any subdivisions classifying crimes in broad general terms such as embezzlement, theft, homicide and fraud. There was, therefore, simply no more general subdivision in which the section, as amended in 1935, could have been placed. When a recodification of the Penal Code was effected in 1948, the revisers placed the statute in a chapter designated "Robbery and Burglary" (18 U.S.C. (Supp. III 1950) 2111 et seq.), despite the fact that the code contained another chapter designated "Postal Service" (18 U.S.C. (Supp. III 1950) 1691 et seq.). Although the revisers' action "did not expand the meaning Congress had entertained in 1935" (United States v. Reid, 517 F.2d at 957), by

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10/ Even statements by a member of the congressional committee responsible for formulating legislation cannot be given effect so as to override the clear and unambiguous language of the statute. See Railroad Commission v. Chicago B. & Q. R.R., 257 U.S. 563, 589 (1922); 2A J. Sutherland, Statutory Construction, § 48.14 at 220 (4th ed. 1973). In this case, if the sole purpose of the 1935 amendment to the postal robbery statute was to extend its protection to non-mail postal property, it would have been a simple matter for the committee of which Congressman Dobbins was a member to have so limited it by the addition of language "immediately obvious to the least skillful of draftsmen." United States v. Reid, 517 F.2d at 969 (Mansfield, J., dissenting).

the same token, it surely demonstrates that the earlier placement of the statute in the section entitled "Offenses Against the Postal Sevice" is of no particular consequence for purposes of ascertaining its scope.

4. Finally, petitioners' argument (Pet. 20) that the 1935 amendment to Section 2114 should be construed as applying only to postal employees because the robbery of non-postal property was proscribed prior to 1935 by the statute now codified at 18 U.S.C. 2112 is unpersuasive. As the court below observed (Pet. App. 420), a straightforward reading of Section 2114 achieves consistency among federal statutes proscribing violent robbery of government employees: all such robberies, whether of postal employees or other officers and whether of mail or other property, result in the same 25-year mandatory penalty. By constrast, the interpretation proposed by petitioner and adopted by the Second and Ninth Circuits results in a mandatory 25-year term for assaultive robberies of post office employees (or even attempts), while successful robberies of other government workers trigger a maximum penalty of 15 years under 18 U.S.C. 2112 or 10 years if the offense is charged as an assault with a dangerous weapon under 18 U.S.C. 111. It is highly unlikely that Congress intended such seemingly pointless inconsistencies. 11/

CONCLUSION

The petition for a writ of certiorari should be granted.

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MARCH 1984

11/ Indeed, it is quite likely that the sentencing anomaly noted by the court of appeals has not been resolved precisely because a straightforward reading of Section 2114 avoids inconsistent penalties for the violent robbery of different classes of government officials, so that Congress has not appreciated that any need for corrective legislation exists.